

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Monday, March 22, 2004

MINUTES

5:30 P.M.

Closed Session

Commissioner Heron moved, seconded by Commissioner Cousin, to adjourn to closed session to discuss a claim and preserve the attorney-client privilege and to establish and instruct the staff regarding the position to be taken on behalf of the public body in negotiating the price and other material terms of a proposed contract for the acquisition of real property, said property being inactive railroad property owned by Norfolk and Southern located roughly parallel to Roxboro Road through northern Durham County into Person County and a line through the City of Durham known as the Duke Beltline, pursuant to G.S. § 143-318.11(a)(3) & (5) and to discuss Mullinax v. Covington, 04 CVD 1396.

The motion carried unanimously.

7:00 P.M. Regular Session

Opening of Regular Session—Pledge of Allegiance

Agenda Adjustments

Chairman Reckhow announced that action on the March 3, 2004 Worksession Minutes would be deferred until a future meeting so revisions could be made. She removed consent agenda item No. g. to permit staff to do further work.

Minutes

Commissioner Heron moved, seconded by Commissioner Jacobs, to approve as submitted the January 29, 2004 Annual Retreat Minutes and the March 8, 2004 Regular Session Minutes of the Board.

The motion carried unanimously.

Commissioner Heron referenced the “Memorandum of Understanding with District Attorney and Public Defender” in the March 3, 2004 Worksession Minutes. The memorandum requires semi-annual reports to the Board of County Commissioners regarding the effects of the initiative on the County’s jail population. Commissioner Heron recommended that the County Manager provide a basis for comparing the jail population (July 2003 compared to July 2004).

Commissioner Heron referred to the directive assigned to staff at the March 3 meeting for a 30- to 60-day response about problems relating to “clear cutting” timber. She expressed the importance of a prompt response, as she was still receiving telephone calls concerning the disarray at the corner of Cole Mill and Umstead Roads. Forestry or timber management has begun no cleanup or tree replacement. The County should be informed when “clear cutting” is taking place, given that it has become a major problem.

County Manager Ruffin stated that a report was being prepared and would be presented to the Board as soon as possible.

County Engineer Glen Whisler added that a meeting was held with the Forestry staff, at which time a determination was made that the Cole Mill and Umstead Road site is within the Forestry jurisdiction, not Sedimentation and Erosion Control.

Consent Agenda

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve the following consent agenda items:

- *(a) Property Tax Releases and Refunds for Fiscal Year 2003-04 (accept the February property tax release and refund report as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
- *(b) Budget Ordinance Amendment No. 04BCC0000058—Tax Administration—Increasing Property Tax Revenue by \$350,000 Collected Through Personal Property Audits and Foreclosure Settlements (approve the budget ordinance amendment increasing property tax revenue by \$350,000 to support increased fee payments for new billable property found and for increased foreclosure activity; these funds, if spent, will bring in significantly more revenue than the actual dollars budgeted);

- * (e) Budget Ordinance Amendment No. 04BCC000063—
Approve the Recommended Financing of the Project,
Including Reimbursement of General Fund Fund
Balance (approve the budget ordinance amendment
refunding funds from General Fund fund balance in
the amount of \$3,425,000) (computer software
project); and
- (h) Request to Award Contract to Aramark Facility
Services to Replace Sally Port Slider Door Hardware
at the Durham County Detention Center (approve the
contract with Aramark Facility Services to
sub-contract Southern Steel to replace the slider door
components of six doors needing attention as
identified by the Detention staff; authorize the County
Manager to execute a contract with Aramark Facility
Services in the amount of \$37,500).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda Item No. a. Property Tax Releases and Refunds for Fiscal Year 2003-04
(accept the February property tax release and refund report as presented and authorize the
Tax Assessor to adjust the tax records as outlined by the report).

Due to property valuation adjustments for over assessments, listing discrepancies,
duplicate listings, and clerical errors, etc., the report details releases and refunds for the
month of February 2004.

Releases & Refunds for 2003 Taxes:

Real	\$	3,021.93
Personal	\$	4,843.23
Registered Vehicles	\$	15,417.21
Vehicle Fees	\$	140.00
Solid Waste	\$	<u>65.00</u>
Total for 2003 Taxes and Fees	\$	23,487.37

Prior years' (1998-2002) releases and refunds for February 2004 are in the amount of
\$7,209.06.

The total current year and prior years' releases and refunds amount to \$30,696.43.

(Recorded in Appendix A in the Permanent Supplement of the March 22, 2004 Regular
Session Minutes of the Board.)

Consent Agenda Item No. b. Budget Ordinance Amendment No. 04BCC0000058—Tax Administration—Increasing Property Tax Revenue by \$350,000 Collected Through Personal Property Audits and Foreclosure Settlements (approve the budget ordinance amendment increasing property tax revenue by \$350,000 to support increased fee payments for new billable property found and for increased foreclosure activity; these funds, if spent, will bring in significantly more revenue than the actual dollars budgeted).

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000058

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Taxes	\$135,306,065	\$350,000	\$135,656,065

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
General Government	\$ 23,541,915	\$350,000	\$ 23,891,915

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 22nd day of March, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. e. Budget Ordinance Amendment No. 04BCC000063—Approve the Recommended Financing of the Project, Including Reimbursement of General Fund Fund Balance (approve the budget ordinance amendment refunding funds from General Fund fund balance in the amount of \$3,425,000) (computer software project).

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000063

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Other Financing Sources	\$ 19,673,041	\$3,425,000	\$ 23,098,041

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Other	\$ 22,226,742	\$3,425,000	\$ 25,651,742

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 22nd day of March, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Items Removed for Discussion

Consent Agenda Item No. c. Budget Ordinance Amendment No. 04BCC000061—Fire Marshal—State Homeland Security Grant Program—Recognize DHS Part II Grant Money (approve the budget ordinance amendment in the amount of \$687,370 received from the Department of Homeland Security through the North Carolina Department of Crime Control and Public Safety; it is requested that the grant monies be recognized and applied to Durham County Emergency Management).

Chairman Reckhow inquired about the proposed expenditure of funds. She asked whether a list was available reflecting the planned projects and/or items to be purchased.

Fire Marshal/Emergency Management Director Jeff Batten responded that a draft list has been created and would be provided to the Commissioners upon completion. The department is in the final stages of prioritizing first responder agencies to receive grant funds. With funding from past grants, the department has partially outfitted both City and County first responders with personal protective equipment, as mandated (that the money be distributed between both governmental entities). Funds received from this grant will be used to complete the purchase of protective equipment and to purchase equipment to expand emergency responses, such as assisting the Sheriff's bomb unit.

Chairman Reckhow instructed Mr. Batten to provide the Commissioners with an overall plan of how future grant monies will be expended and how the intended purchases relate to the plan, which should correspond with regional preparedness efforts. In addition, Chairman Reckhow asked Mr. Batten to present to the Board, in the near future, a list of items to be purchased with grant monies recognized in this agenda item.

Chairman Reckhow moved, seconded by Vice-Chairman Bowser, to approve Budget Ordinance Amendment No. 04BCC000061—Fire Marshal—State Homeland Security Grant Program—Recognize DHS Part II Grant Money (consent agenda item No. c).

The motion carried unanimously.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000061

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental Revenues	\$298,924,649	\$687,370	\$299,612,019

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 36,767,364	\$687,370	\$ 37,454,734

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 22nd day of March, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. d. Budget Ordinance Amendment No. 04BCC000062—Social Services—Requesting CAP/DA Social Worker Position (approve the budget ordinance amendment as presented).

While Commissioner Heron expressed avid support of the additional social worker position, she requested information about the impact on future budgets.

Gloria Green, Program Manager of Adult Services, DSS, responded that ongoing funding from the Division of Medical Assistance would fully fund the position. To her knowledge, future budgets will not be affected.

Commissioner Heron directed County Manager Ruffin to find out whether the new position would influence future budget.

Chairman Reckhow clarified that DSS is fully reimbursed \$42.56 from the Division of Medical Assistance for each hour of service provided to these particular clients. This reimbursement situation will not vary unless the formula or guidelines change.

Commissioner Heron moved, seconded by Vice-Chairman Bowser, to approve Budget Ordinance Amendment No. 04BCC000062—Social Services—Requesting CAP/DA Social Worker Position (consent agenda item No. d).

Commissioner Jacobs asked if this new position would afford Social Services the opportunity to receive additional slots, should they become available.

Ms. Green responded that this position would provide adequate case management for several more slots.

The motion carried unanimously.

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000062

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental Revenues	\$299,612,019	\$11,683	\$299,623,702

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$359,287,724	\$11,683	\$359,299,407

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 22nd day of March, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. f. Request for Contract Award to Applied Control Technologies to Repair and Upgrade the Current HVAC System for the Health Services Building With Andover Controls (authorize the County Manager to enter into a contract with Applied Control Technology for \$219,874 to repair existing HVAC mechanical components and upgrade the environmental [HVAC] Andover Controls with the existing Direct Digital Control [DDC] system and execute change orders, if necessary, not to exceed \$10,994 [5%]; the total contract amount shall not exceed \$230,867).

Vice-Chairman Bowser inquired about the following:

- whether the items to be purchased for the repair and upgrade to the HVAC system could be transferred to the new Human Services Complex;
- life expectancy of the controls;
- location of the “Health Services Building” (is it the Health Department?); and
- whether the air quality is within state and federal guidelines.

Mike Turner, General Services Director, replied to Vice-Chairman Bowser’s inquiries by stating that a majority of the components are direct digital controls and can be relocated to another building. The life expectancy is approximately 15 to 20 years. Mr. Turner informed Vice-Chairman Bowser that the building was referred to as the Health Services Building because some years ago Mental Health and Public Health were both located in that building. Presently, Public Health is located there. The air quality in the building was tested, resulting in a report indicating no mold or bacteria. The environmental controls referenced in the agenda item are related to the interior temperature, not environmental problems.

Vice-Chairman Bowser moved, seconded by Commissioner Cousin, to approve the Request for Contract Award to Applied Control Technologies to Repair and Upgrade the Current HVAC System for the Health Services Building with Andover Controls (consent agenda item No. f).

The motion carried unanimously.

RFP RESPONSE TABULATION
RFP #04-016
Update HVAC/DDC Automation System
at the Health Department
Date Due: December 4, 2003 at 2:00 P.M.

Bidder	Addendum Acknowledgement	Non-Collusion Affidavit	M/WBE Acknowledgement	Proposed Cost
Applied Control Technology P O Drawer 185 Morrisville, NC 27560	Yes	Yes	Yes	\$219,874
York International Corp. 2800-12 Sumner Blvd. Raleigh, NC 27616	Yes	Yes	No	\$195,477

Major Site Plan—Ample Storage (D03-267)

The Board was requested to approve a Major Site Plan for a 47-unit mini-storage warehouse on 0.471 acres located on the north side of Wolfpack Lane, west of Old Oxford Highway.

Duane K. Stewart Associates, on behalf of Lampe Management Company, submitted a site plan for a 47-unit indoor mini-storage warehouse with three parking spaces on a 0.471-acre site. The proposed project would be located on the north side of Wolfpack Lane, west of Old Oxford Highway, and be accessed by a driveway entrance off Wolfpack Lane. Street Atlas Page 42, Block D-2. PIN 0833-02-79-7150 (Tax reference 783-01-004G).

RESOURCE PERSON(S): Frank M. Duke, AICP, Planning Director

COUNTY MANAGER'S RECOMMENDATION: The Manager's recommendation was that the Board receive the presentation and approve the site plan.

Mr. Duke informed the Board that this major site plan meets ordinance requirements through minor special use permits for development of a nonconforming lot and three variances for rear and side setbacks approved by the Board of Adjustment.

Commissioner Jacobs asked about the adequacy of three parking spaces for a 47-unit storage warehouse.

Mr. Duke replied that the code does not specify minimum parking spaces for this particular site, but the Development Review Board determined that three parking spaces are sufficient.

Commissioner Heron asked Mr. Duke about proposed plans for four adjacent lots on Wolfpack Drive.

Mr. Duke responded that the lot immediately adjacent to the site contains a mini warehouse. The three remaining lots are undeveloped.

Chairman Reckhow conveyed to Mr. Duke that she was unaware of a provision allowing for a reduced tree replacement area depending on floor area ratio (FAR). She asked if this provision would be incorporated into the Unified Development Ordinance.

Mr. Duke explained that in certain FARs or densities, a mathematical formula is used to determine the reduction. A refinement of this provision is being considered in the UDO.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve Major Site Plan—Ample Storage (D03-267).

The motion carried unanimously.

The staff report follows:

Case:	D03-267		
Project Name:	Ample Storage		
Applicant:	Lampe Management Company		
Plan Type:	Major Site Plan		
Jurisdiction:	County UGA		
Street Atlas:	Page 42, Blocks D-2		
Location:	North side of Wolfpack Lane and west of Old Oxford Highway		
PIN/TM:	0833-02-79-7150 (Tax reference 783-01-004G)		
Proposal:	Site plan for a 47-unit mini-storage warehouse with 3 parking spaces on a 0.471-acre site.		
Zoning Districts:	I-2 and F/J-B	River Basin:	Neuse
Related Zoning Case:	None		
Related Plans:	North Durham		
Planning Department Recommendation:	Approval. The site plan, as submitted, meets all ordinance requirements.		
Development Review Board Recommendation:	Approval, subject to minor technical corrections that have since been made, at its meeting on December 12, 2003.		

Project Summary: Duane K. Stewart Associates, on behalf of Lampe Management Company, has submitted the site plan. The proposed site would be accessed by a driveway entrance off Wolfpack Lane.

Site Description: The existing site is partially wooded, with a mixture of deciduous hardwoods and pines.

Dimensional Requirements: This site is 20,516 square feet (0.471 acres) in size and 96.17 feet wide. The I-2 zoning requires a minimum 25,000-square-foot lot with 100 feet of lot width. Therefore, this tract is classed as a nonconforming lot. At its December 9, 2003 meeting, the Board of Adjustment approved a Minor Special Use Permit (B03-32) authorizing development on a nonconforming lot.

The proposed building will exceed the required street side setback of 40 feet with a 45-foot setback. The required 20-foot minimum setback for parking and internal drives is being exceeded with a 29-foot setback. The building as proposed does not meet the minimum 30-foot internal side setback, but the Board of Adjustment at its December 9, 2003 meeting, approved the following variances: a 21.5-foot setback from the east side lot line (Case B03-31), a 10.2-foot setback from the west side lot line (B03-31A), and a 22.5-foot setback from the north rear lot line (B03-31B).

Under the ordinance, parking requirements for mini-storage warehouses are determined by the Development Review Board (DRB). The applicant is proposing three parking spaces at a ratio of one space per 16 units in the indoor storage facility. The DRB approved this parking request at its November 14, 2003 meeting. No bicycle parking spaces are required for this project.

Watershed Protection: The site lies within the F/J-B watershed protection area and the Neuse River Basin. The applicants are proposing a total impervious surface for the entire project of 14,282 square feet, or 69.6% of the site. While this percentage would typically require on-site stormwater controls under the high-density option, the actual disturbed area is less than 1 acre, meaning that the site is exempt from stormwater controls under Section 5.5.11 of the watershed ordinance.

County Engineering reviewed this proposal and determined that since the site is less than 0.5 acres and the applicant is not installing a stormwater collection system, the project is exempt from the Durham County Stormwater Ordinance.

Utilities: As an unmanned mini-storage facility without an on-site manager's office, this project as proposed does not require public water and sewer services. All utilities are to be installed underground.

Streets and Sidewalks: This project includes a two-way driveway entrance off Wolfpack Lane, which is an existing street built to NC DOT standards. Sidewalks are already in place along this side of the street.

Street Trees: The project includes three street trees along the Wolfpack Lane frontage, which meets the minimum ordinance requirements.

Floodplain and Stream Buffers: There are no floodplains or streams on this lot.

Steep Slopes and Wetlands: There are no steep slopes or wetlands on this site.

Tree Coverage: The ordinance requires 14% minimum tree replacement area for a development, which is not saving existing trees, such as this project. With a floor area ratio (FAR) of 37.8%, the required tree replacement area can be reduced by 33%. The applicant proposes to provide 1,924 square feet, or 9.4% tree replacement area, which meets the minimum tree coverage requirements.

Neighborhood Notification: In accordance with Planning Department policy of notifying nearby neighborhood groups, Northeast Durham Neighborhood Association, the Durham Justice and Fairness Neighborhood Association, and the Inter-Neighborhood Council have been notified of this project.

Applicant received Board of Adjustment approval to develop on a nonconforming lot (Case B03-32).

Applicant received Board of Adjustment approval for reduced setbacks (Cases B03-31, 31A, 31B).

Capital Project Ordinance Amendment No 04CPA000011—Little River Regional Park and Natural Area Construction Project

The 391-acre Little River Regional Park and Natural Area is jointly owned by Orange and Durham Counties and will be jointly managed by the two counties. Both Orange and Durham County Boards of Commissioners approved the site plan in June 2003. Park development will include the entrance road and parking area, caretaker's residence, two picnic shelters, restroom facilities, children's play area, an accessible trail loop with picnic amenities, and a trail system to include walking/hiking, mountain biking, and equestrian trails.

The park project includes several elements that are being handled under separate contracts. Project elements underway under separate contracts include improvements to the hiking and walking trails, renovations to incorporate and reuse historic outbuildings on the site, and the relocation of a home for a caretaker's residence. The majority of construction for the park went out for bid in January 2004. Orange County handled the bidding, since the construction will be managed by Orange County. Durham County will be billed by Orange County for its proportionate share of the construction expenses. Three bids were received with the low bid at \$706,166. With this construction cost now firmed up, the overall project budget for the park has increased to \$992,276. Two separate grants previously received totaling \$312,000 help to lower the two counties' portion of this development budget. The remaining one-half portion for each county's share is \$340,138.

Durham County has an overall Little River Regional Park capital project account that includes funding for Durham County's share of both the land acquisition expenses and development phases of the park. This capital project account presently totals \$711,376, which includes \$229,088 available for anticipated development expenses using a combination of park and recreation bonds and previously approved county contribution. An additional \$111,050 is needed to pay for the extra development expenses, which are anticipated to be sufficient to finish construction at the park. The needed funds are available in the Open Space Acquisition and Development capital project budget. The funds had been reserved for matching funds for potential New Hope acquisitions but can be reallocated since the CWMTF grant for New Hope acquisitions has expired and the County presently has no willing sellers in that project area.

RESOURCE PERSON(S): Glen Whisler, County Engineer; Jane Korest, Open Space and Real Estate Manager; and Mike Giles, Open Space Land Manager

COUNTY MANAGER'S RECOMMENDATION: The Manager recommended that the Board approve the Little River Regional Park and Natural Area amended development budget and Capital Project Ordinance Amendment No. 04CPA000011 to increase the Little River Regional Park capital project from \$711,376 to \$822,426.

Ms. Korest reported that the 391-acre Little River Regional Park and Natural Area is jointly owned by Orange and Durham Counties and will be jointly managed by the two counties. The park was acquired with the additional assistance of the Triangle Land Conservancy and Eno River Association, who have remained active partners during the planning and design stages. Two community meetings were also previously held to receive input on desired park elements and design issues. Both the Orange and Durham County Boards of Commissioners approved the site plan for park development in June 2003. Park development will include the entrance road and parking area, caretaker's residence, two picnic shelters, restroom facility, children's play area, an accessible trail loop with picnic amenities, and a trail system to include walking/hiking, mountain biking, and equestrian trails.

Several of these park elements are underway through separate contracts and with staff supervision, including renovations to incorporate and reuse historic outbuildings on the site, and the relocation of a home for a caretaker's residence. Over eight miles of hiking trails and six miles of bike trails have been designed and are under construction with the use of volunteer workdays.

The majority of the park construction went out for bid in January 2004. The construction contract includes the entrance drive and parking bts, restroom facility, park office, and accessible nature trail with picnicking. Two picnic shelters and a children's playground are also included. The project bidding was handled by Orange County since the construction contract will be managed by Orange County. As a result, Durham County will be billed by Orange County for its proportionate share of the construction expenses.

Three bids were received with the low bid at \$706,166. With this construction cost now firmed up, the overall project budget for the park development has increased to \$992,276. As shown in the attached table, additional project elements summarized in this development budget include project design fees, pre-construction studies, the caretaker's house, historic outbuilding renovations, nature trails improvements, park signage, construction oversight and other associated development costs handled outside of this construction contract.

To begin construction as soon as possible, it is important for both Boards to approve the revised development budget and project funding. The Orange County budget includes two minor differences. The first is that it excludes the \$13,300 cost for removal of an abandoned house (the Laws house) at the entranceway, because Orange County wishes to consider the house separately at a future meeting and whether they wish to fund deconstruction of the house, relocation, or renovating on site. Durham County staff recommends that the house be deconstructed during remaining park construction. Appropriate funding has been included in the project budget for that cost. The second change is that the Durham County budget has included a construction contingency of five percent, while Orange County used only three percent. A recently completed soils study indicates minor work may be required in some areas to stabilize the soils under the structures and paving, and a five percent contingency is recommended by staff as more appropriate in order to address this or other issues that may arise during construction.

Orange and Durham Counties have previously received two separate grants to assist with site development costs - a federal Land and Water Conservation Fund (LWCF) grant for \$262,000 and a state Trails grant for \$50,000. These two grants total \$312,000 and reduce the portion of the overall remaining site development costs to \$680,276. Durham County's one-half portion of this would be \$340,138.

Durham County has \$229,088 currently available for anticipated development expenses that was previously approved by the Board of Commissioners in a combination of park and recreation bonds and county contribution. The funds are in an overall Little River Regional Park capital project account that presently totals \$711,376. This capital project total amount also includes funding for Durham County's share of acquisition expenses as well as the anticipated development costs of the park.

An additional \$111,050 is required to fund Durham's share of the additional development expenses, anticipated to be sufficient to finish park construction. The needed funds are available in the Open Space Acquisition and Development capital project budget. The available funds had been reserved for matching funds for potential New Hope acquisitions but can be reallocated since the CWMTF grant for New Hope acquisitions expired in December 2003, and the County presently has no willing sellers in that project area.

With the approval by both Orange and Durham County of the revised project funding and construction costs, construction is anticipated to begin by the end of April, or sooner. A

joint groundbreaking ceremony with the two boards of Commissioners will be planned. The construction contract has a 120-day time period with August as the projected completion date for construction.

Vice-Chairman Bowser asked who would be responsible for park supervision and records management (i.e. reservations for park facilities).

Ms. Korest responded that the Orange County Recreation and Parks Department will be responsible for park maintenance and operations (per the interlocal agreement approved by the County Commissioners last fall), since Durham County has no such department. Durham County will reimburse Orange County for one-half of the operating expenses (to be approved each year during budget deliberations).

Vice-Chairman Bowser advised that a process be implemented to make sure that Durham County residents are treated fairly.

Chairman Reckhow asked if decisions had been made regarding the advertising procedure for the park.

Ms. Korest responded that newspaper advertisements about trail workdays have produced much success. Once the park is operational, she intends to post announcements on Durham and Orange County websites and in area newspapers.

Chairman Reckhow called signed speaker Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702 forward.

Dr. Allison communicated the following concerns:

- park management and hiring of staff;
- Durham County contributing more project funding than Orange County;
- park location; and
- insufficient funding for existing parks.

Chairman Reckhow addressed Dr. Allison's concerns. She stated that 2/3 of the land acquired for the park is in Durham County; therefore, Durham County's financial portion was greater. Nevertheless, Orange County agreed to share the development cost 50/50, as well as all other costs. She suggested assigning a Durham County staff person as a telephone contact for Durham County residents for reservations, information, etc. so the park is user-friendly for Durham County residents.

Commissioner Heron asked questions about the resident manager for the park and recommended that he/she be responsible for park reservations, etc.

Ms. Korest informed Commissioner Heron that the resident manager or caretaker would provide additional oversight of the park when staff is unavailable, given that the funding level is inadequate for 24-hour-day staffing. Operational guidelines for specific caretaker

duties have yet to be determined. She would convey Commissioner Heron's recommendation to the team composing the guidelines.

Chairman Reckhow commented that this park would provide opportunities not currently available in other Durham County parks, such as mountain biking and horseback riding. The park will also serve the conservation objective since a long portion of the Little River runs through this property.

Commissioner Heron added that a certain area of the park would be handicap accessible.

Commissioner Cousin expressed his opinion that using this area of land as a park is preferable to the original plan for a landfill, especially given its close proximity to a water supply.

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the Little River Regional Park and Natural Area amended development budget and Capital Project Ordinance Amendment No. 04CPA000011.

The motion carried unanimously.

Commissioner Heron inquired about the Clean Water Management Trust Fund Grant for New Hope.

Ms. Korest explained that most of the land acquired was in the floodplain and had a relatively low appraised value. Over the past 18 months, staff has made a concerted, yet futile attempt to persuade reluctant landowners to sell because of the high-dollar location of the land (15-501 Corridor). Not all required properties could be obtained and not all grant funds were used. The grant expired in December after five years. The state has made these grant funds available to another project area.

Health Trust Fund Transfer Request

The BOCC was requested to transfer \$1,500,000 from MDL to US Trust (Fixed Income Managers). The purpose for this transfer was in recognition of US Trust's performance over the past two years. In November 2001, MDL was given an additional \$3,000,000 (transferred from US Trust) because of its outstanding performance. This transfer will put both managers on par.

The Finance Department does not believe a change in managers is appropriate at this time but will continue to monitor the performance of all our managers and report to the BOCC as required.

RESOURCE PERSON(S): George K. Quick, Finance Director

COUNTY MANAGER'S RECOMMENDATION: The Manager recommended that the BOCC authorize the above recommendation.

Mr. Quick explained the rationale for the requested transfer.

Commissioner Heron inquired about possible penalties for transferring these monies. She also asked when the Board would receive reports pertaining to investment performance.

Mr. Quick replied that no penalty is associated with the transfer. Staff provides reports to the Board on a quarterly basis. This particular transfer should be completed by the end of the first quarter (March), thus a progress report would be presented in July.

Commissioner Heron expressed that if the July reports do not reflect significant growth, further changes should be considered.

Commissioner Jacobs moved, seconded by Vice-Chairman Bowser, to authorize the request to transfer \$1,500,000 from MDL to US Trust.

The motion carried unanimously.

Interlocal Agreement with the City of Durham for Community Learning Center

On December 1, 2003, the Board of County Commissioners approved the creation of the Community Learning Center under the supervision of the Criminal Justice Resource Center. The target population for the program is students who are expelled from DPS (permanently removed), suspended for 365 days (not allowed on DPS property, often for a weapon charge), or who are ineligible for the Lakeview option due to safety concerns. The program serves up to ten students and operates Monday through Friday from 9:00 a.m. to 12:30 p.m.

On December 4, 2003, the City Council approved funding in an amount not to exceed \$27,960 for this program, authorizing the City Manager to negotiate and execute an interlocal agreement with the County. The initial interlocal agreement approved by the Board of County Commissioners on January 5, 2004 was submitted to the City of Durham. In February 2004, the County Manager's office received a response from the City Manager's office suggesting several changes to the original version based upon a City Council directive. The City Council has requested that language be amended in the interlocal to address early termination, method of payment, and more detailed reporting requirements. The amendments have been made to the original interlocal agreement. Staff has reviewed the amended changes and recommends approval.

RESOURCE PERSON(S): Gudrun Parmer, Criminal Justice Resource Center, and Carol Hammett, County Attorney's Office

COUNTY MANAGER'S RECOMMENDATION: The Manager's recommendation was that the Board authorize the Manager to execute an interlocal agreement with the City of Durham for the Community Learning Center. The program will be evaluated at the end of the fiscal year to determine the future viability of the initiative.

Ms. Parmer gave an overview of the agenda item.

Commissioner Heron asked Ms. Parmer whether the Community Learning Center was currently operational.

Ms. Parmer responded that the program was "up and running".

Commissioner Jacobs wanted to know whether holidays observed by the Center correspond with Durham Public Schools or Durham County Government holidays.

Ms. Parmer replied that the Center's schedule is identical to that of Durham County Government. The teachers are employed by Durham County. Staff schedules one workday per month to develop reports.

Chairman Reckhow agreed with the appropriate changes made to the interlocal by the City. She was in favor of extensively monitoring this pilot program to assure accountability for the money spent. Chairman Reckhow recommended that the April 1 report requested by City Council be shared with the County Commissioners. She also requested an interim report at the end of May to aid the Commissioners in budget deliberations regarding this program. Discussion has been underway as to how to meld this and other initiatives in order to save money.

Ms. Parmer informed the Commissioners that a monthly report would be provided to outline some of the data (attendance, enrollment, progress, activities, etc.). Data pertaining to performance could not be easily captured on a monthly basis, but would be provided quarterly.

Commissioner Cousin wished to be provided information about Durham Public Schools' (DPS) financial commitment to New Horizons.

Chairman Reckhow expressed that an unfortunate situation exists because the need for alternative schools is greater than capacity. She has spoken with Elton O'Neal, Lakeview School Principal, who informed her that Lakeview is receiving out-of-county placements. Durham County is spending much money to educate students from other counties. She asked County Attorney Chuck Kitchen to propose in the legislative agenda that counties supply their fair share of group homes. Durham County is making an effort to keep its children close to their families.

County Attorney Kitchen stated that when this issue was addressed approximately five years ago, the determination was made that an equal amount of Durham children were being placed out-of-county as were being received. He consented to reevaluating the statistics.

Commissioner Heron supported the request made by Chairman Reckhow. In addition, she asked County Attorney Kitchen to explore the issue of financial responsibility for the out-of-county children.

Vice-Chairman Bowser echoed the concerns of Commissioner Cousin regarding the funding gap for New Horizons. He did not concur with funding a new program since New Horizons could be closed if not provided adequate funding.

Chairman Reckhow agreed with Vice-Chairman Bowser, stating that staff was attempting to locate other funding options in next year's budget for the Community Learning Center.

Chairman Reckhow called signed speaker Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702 forward.

Dr. Allison voiced her opinion that the Community Learning Center was initiated on misinformation. She was concerned about DPS's failure to obtain grant monies for New Horizons, which may result in the program being discontinued. She challenged the Board to mend the disconnect between the County Commissioners, City Council, and Durham Public Schools

Several Commissioners insisted that the target population for the Community Learning Center and New Horizons be identified, with clarification of the terms "expelled" and "suspended" students.

Chairman Reckhow directed that the County Manager request that Durham Public Schools provide answers (in writing) to the Commissioners' questions.

Commissioner Heron moved, seconded by Commissioner Jacobs, that the Manager execute the interlocal with the City of Durham for the Community Learning Center and that the program be evaluated at the end of this fiscal year to determine its future.

The motion carried unanimously.

**Budget Ordinance Amendment No. 04BCC000064—Self Insurance Fund
Unemployment Compensation and Worker's Compensation Expenditures**

Due to an especially bad year for unemployment and worker's compensation claims, additional monies are required for both of these self-insured accounts. Unemployment

insurance was budgeted in the amount of \$100,000 for FY 02-03. The actual amount of the compensation billed was \$215,938.52. Unemployment benefits are paid by the State and are subsequently reimbursed by the County in the following fiscal year with the bill being paid in November or December. The principal reason for the more than doubling of the cost of unemployment appears to be the poor economy. Instead of being able to find new employment after leaving the County, former employees have continued to receive benefits. The current year's unemployment is worse than last year's with a projected cost of near \$250,000. This amount will need to be included in next year's budget.

The amount of worker's compensation claims has also increased this year. Worker's compensation claims have historically been difficult to estimate, as they tend to vary widely from year to year. This year has seen a drop in the number of claims, but an increase in serious injuries. One older claim has been proposed to be settled by the County's former excess insurance carrier for \$225,000, which would have to be paid initially by the County with a partial reimbursement of \$185,000 after payment. This settlement amount is awaiting approval by Medicare. In addition to this amount, the other worker's compensation claims are projected to be approximately \$175,000 above the budgeted amount of \$560,000.

The total amount of unemployment compensation and worker's compensation claims are approximately \$515,000 over budget for the current fiscal year. Savings in other line items in the Risk Management budget have been identified totaling \$35,000. This leaves a shortfall of \$480,000 for the current year.

Staff requests that the Board accept the County Manager's recommendation to transfer \$480,000 of unrecognized General Fund property tax revenue to the Self Insurance Fund to cover these unexpected expenditures.

As part of the approved FY 03-04 Budget, \$350,000 was budgeted as a transfer to the General Fund from the Self Insurance Fund to aid in balancing the overall General Fund budget. This budgeted transfer, in effect, decreases the amount of General Fund dollars supporting this amendment to a net of \$130,000.

RESOURCE PERSON(S): Chuck Kitchen, County Attorney; Cathy Whisenhunt, Risk Manager; and Marie Shaw-Simmons, Senior Human Resources Analyst

COUNTY MANAGER'S RECOMMENDATION: The Manager recommended that the Board approve Budget Ordinance Amendment No. 04BCC000064 recognizing and transferring \$480,000 of property tax revenue from the General Fund into the Self Insurance Fund for unexpected unemployment compensation and worker's compensation claim expenditures.

Chairman Reckhow asked County Attorney Kitchen to enlighten the Board concerning the request for additional monies for unemployment and worker's compensation claims.

Commissioner Jacobs inquired about employee safety programs, expressing that a training and awareness curriculum could potentially reduce worker's compensation claims.

Ms. Whisenhunt responded that a condensed safety program is presented to new employees during orientation classes. Risk Management has identified additional programs it wishes to implement when funding is available.

County Attorney Kitchen stated that funding for the safety classes has been requested in Risk Management's FY 2004-05 budget. The County Commissioners must make a determination as to whether they will fund the classes.

Chairman Reckhow affirmed Commissioner Jacobs' remarks about safety programs.

Commissioner Heron commented that she and Chairman Reckhow attended a session on an excellent safety program in a North Carolina county. She recommended that an effort be made to obtain information with respect to this specific program for possible execution.

Commissioner Cousin moved, seconded by Commissioner Jacobs, to approve Budget Ordinance Amendment No. 04BCC000064 recognizing and transferring \$480,000 of property tax revenue from the General Fund into the Self Insurance Fund for unexpected unemployment compensation and worker's compensation claim expenditures.

The motion carried unanimously.

Ethics Policy

The Board previously considered changes to the current ethics policy. As directed, the current ethics policy was revised to include the provisions of the North Carolina Association of County Commissioners suggested ethics policy for county commissioners. The incorporation is accomplished by adding a section providing for additional standards of conduct for county commissioners. The draft also reflects those changes that were previously directed by the Board at the February 23 meeting.

RESOURCE PERSON(S): Chuck Kitchen, County Attorney

COUNTY MANAGER'S RECOMMENDATION: The Manager recommended that the Board review the proposed revised ethics policy and approve, if appropriate.

County Attorney Kitchen commented on the amendments to the Code of Ethics as directed by the Board and as required by statute.

Vice-Chairman Bowser asked for clarification concerning various sections of the policy, specifically Section 7 relating to investigating the misconduct of “County Officials” and County Commissioners.

County Attorney Kitchen responded to a question posed by Chairman Reckhow by stating that the Board of County Commissioners has the ability to override the policy and take necessary action to resolve Durham County Government matters.

Vice-Chairman Bowser questioned Section 3(e) Gifts., noting a typographical error in line 4. He pointed out that he did not violate this policy by attending a meeting in Pennsylvania last year.

County Attorney Kitchen addressed Vice-Chairman Bowser’s inquiries.

Chairman Reckhow recommended that the safeguard for a questionable “gift” is to obtain the advice of the County Attorney.

Commissioner Jacobs stated that she was pleased with the revised, comprehensive Ethics Policy that addresses additional items of concern.

Chairman Reckhow expressed appreciation to Commissioner Jacobs for suggesting that the Ethics Policy be amended. She asked County Attorney Kitchen to send this model policy to the Association.

Commissioner Heron reiterated that this is a model “Code of Ethics for Appointed and Elected Officials of Durham County”.

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the revised ethics policy.

The motion carried unanimously.

The adopted policy follows:

CODE OF ETHICS FOR APPOINTED AND ELECTED OFFICIALS OF DURHAM COUNTY

Section 1. Declaration of Policy

(a) The Proper Operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policy be made publicly; that public offices not be used for personal gain; and that the public maintain confidence in the integrity of its government.

(b) In recognition of these goals, a code of ethics for Durham County officials is hereby adopted. The purpose of this policy statement is to set forth guidelines for ethical standards of conduct for all such officials by setting forth acts or actions that are incompatible with the best interests of Durham County.

Section 2. Definitions

As used in this article, the following terms shall have the meaning indicated:

Business Entity means any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust or corporations which is organized for financial gain or profit.

County Official means the County Manager, County Attorney, Assistant County managers, County Commissioners, officials appointed by the County Commissioners to other county boards and commissions, department heads, and any employees involved in purchasing or acquiring goods and services for the county.

Immediate Family means the County Official, his/her spouse, and minor children (including stepchildren and foster children).

Interest means direct or indirect pecuniary or material benefit, as a result of an official act, a contract, or transaction with Durham County, accruing to:

- (i) A County Official;
- (ii) Any person in his/her Immediate Family;
- (iii) Any business entity in which the County Official, member of his/her Immediate Family, or is about to be, an officer or director;
- (iv) Any business entity in which an excess of ten (10) percent of the stock, or legal or beneficial ownership of, is controlled or owned directly or indirectly by the County Official, or his/her Immediate Family member.

For the purposes of the above paragraphs, 2, 3, and 4, a County Official is presumed to have knowledge of the financial affairs of his/her Immediate Family members. For the purpose of this policy, the County Official only has an Interest in the affairs of other Immediate Family members if the County Official has knowledge of or should have known of the Interest of the family member.

Official Act Or Action means any legislative, administrative, appointive, or discretionary act of any County Official.

Confidential Information means any information or knowledge which has not been made public through the regular affairs of government. Information that has become public knowledge, whether or not through the regular affairs of government, is not considered confidential information.

Section 3. Standards of Conduct

All County Officials as defined in this article shall be subject to and abide by the following standards of conduct.

(a) Interest in contract or agreement. No County Official shall participate in selection or award of a contract if the contract involves the County Official's own financial interest or the Official is prohibited from voting pursuant to G.S. § 14-234.

(b) Use of official position. No County Official shall use his/her official position or the county's facilities for his/her private gain, or for the benefit of any individual, which benefit would not be available to any other member of the public in the same or similar circumstance. No County Official shall appear before or represent any private person, group or Interest before any department, committee, or board of the county except in matters of purely civil or public concern. The provisions of this paragraph are not intended to prohibit a County Official from speaking before neighborhood groups and other nonprofit organizations.

(c) Disclosure of information. No County Official shall use or disclose confidential information gained in the course of or by reason of his/her official position with the county for purposes of advancing:

- (i) His/her financial or personal interest;
- (ii) The Interest of a business entity of which the County Official, an Immediate Family member, has an Interest;
- (iii) The financial or personal interest of a member of his/her Immediate Family; or
- (iv) The financial or personal interest of any citizen beyond that which is available to every other citizen.

(d) Incompatible service. No County Official shall engage in, or accept private employment or render service for private interest, when such employment or service for private interest, when such employment or service is incompatible with the proper discharge of his/her official duties with the county or would tend to impair his/her independent judgment or action in the performance of his/her official duties with the county, unless otherwise permitted by law and unless disclosure is made as provided in this policy.

(e) Gifts. No County Official shall directly or indirectly solicit any gift, or accept or receive any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, the value of which exceeds \$50.00, under circumstances in which a reasonable person would believe that the gift was intended to influence him/her in the performance of his/her official duties, or was intended as a reward for any official action on his/her part. Legitimate political contributions to County Officials shall not be considered as gifts under the provisions of this paragraph. North Carolina General Statute § 133-32 provides additional guidance concerning gifts and favors.

Exempted from the prohibition are reasonable honorariums for participating in meetings, advertising items or souvenirs of nominal value or meals furnished at banquets. Also exempted are customary gifts or favors between County Officials or officers and their friends or relatives. County Officials must report in writing to the Clerk to the Board of County Commissioners all honorariums and gifts and favors from friends and relatives if made by a covered contractor, subcontractor, or supplier.

It shall not be a violation of this policy for any Public Official to solicit donations, contributions or support for any charitable activity which does not result in direct pecuniary benefit to the Public Official, a member of his Immediate Family, or Business Entity with which he is associated.

(f) County Attorney to Advise. In any case where the value of a gift is in question, or when the circumstances make it unclear as to whether a thing constitutes a "gift" within the meaning of this provision, any individual may consult with the County Attorney for an opinion.

(g) Special Treatment. No County Official shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

Section 4. Disclosure of Interest in Legislative or Quasi-Judicial Actions.

Any official of Durham County as herein defined who has an interest in any business before the Board of County Commissioners shall publicly disclose on the record of the Board the nature and extent of such interest, and shall withdraw from any discussion, deliberation or decision regarding said matter. It shall be a violation of this policy for a County Official who has an Interest in some business before the County Commission to advocate, whether publicly or privately, that Interest to other County Officials.

To maintain the integrity of those actions of the County Commissioners, the Board of Adjustment, the Board of Equalization and Review, and the Board of Health when they sit as quasi-judicial bodies, circumstances even presenting the appearance of a conflict or possible conflict of interest shall be sufficient to require the County Official to

withdraw from the discussion, deliberation or decision of the Board, and the member shall be excused from sitting with the Board during the discussion, deliberation or decision.

Section 5. General Disclosure

(a) All County Officials, as herein defined including those appointed to the Board of Adjustment, the Board of Equalization and Review, Farmland Protection Advisory Board, Durham Historic Preservation Commission, Durham Open Space & Trails Commission, Durham Planning Commission, and the Board of Health, but not including those citizens appointed to other county boards and commissions, shall file with the Clerk to the Board on the first day of February of each year, a statement containing the following information:

- (i) The identity by name and address, of any business entity of which the County Official or member of his Immediate Family (as defined in Section 2 of this chapter), is an owner, official or director. Additionally, the County Official and spouse shall give the name of their employer or, if self-employed, state the nature of their work.
- (ii) The identity, by location and address, of all real property located in Durham County owned by the County Official or member of his Immediate Family, including an option to purchase or lease.

(b) The statements required by this section shall be filed on a form prescribed by the County Commissioners and shall be public records available for inspection and copying by any person during normal business hours. The County Manager is authorized is authorized to establish and charge reasonable fees for the copying of these statements.

Section 6. Investigations of Allegations of Conflicts of Interests.

(a) In cases where there is allegation that there has been a violation of this policy by one or more of the County Commissioners, the County Commissioners shall decide the matter in an open meeting of the Board of Commissioners.

(b) The County Manager shall have the responsibility for investigating any apparent violation of this policy as it applies to any other County Official covered by this ethics policy and to report the findings of the investigation to the Board of County Commissioners.

(c) The County Attorney shall have the responsibility for investigating any apparent violation of this policy as it applies to the County Manager and to report the findings of the investigation the Board of County Commissioners.

(d) Any person who believes that a violation of this article has occurred may file a complaint in writing with the County Attorney when a member of the County Commission or the County Manager is the subject of the complaint, or with the County manager when any other County Official is the subject of the complaint, who may thereafter proceed as provided by paragraphs a, b, and c of this section.

Section 7. Scheduling of hearing before the County Commissioners; rights of accused at hearings; Sanctions.

(a) If the Board of County Commissioners after the receipt of findings of an investigation, determines that a violation of this article has occurred, they shall take, or direct the appropriate individuals to take whatever lawful disciplinary action he/she deems appropriate, including but not limited to, reprimand, suspension, demotion, or termination of service.

(b) If the Board of County Commissioners, after receipt of an investigation from the County Attorney and/or the County Manager, has cause to believe a violation may have occurred, they shall schedule a hearing on this matter. The official who is charged with the violation shall have the right to be represented by counsel, to present evidence, including the testimony of witnesses, and to cross-examine witnesses, including the complainant or complainants, at the hearing. If, after such hearing and review of all the evidence, the Board of County Commissioners, by majority vote of the members of the Commission, finds that a violation has occurred, they shall take, or direct the appropriate individuals to take whatever lawful disciplinary action they deem appropriate.

(c) The Board of Commissioners by majority vote of the remaining members, finds that a violation by a county commissioner has occurred, they may adopt a resolution of censure which shall be placed as a matter of record in the official minutes of the Board meeting.

(d) The hearing to be held as provided for herein shall be conducted by the Board of County Commissioners in Closed Session for individual County Officials. The hearing to be held as provided for herein shall be conducted by the Board of County Commissioners in open session for officials appointed by the County Commissioners to other boards and commissions. Any determination resulting from said hearing shall be determined in open session of the Board. The Clerk to the Board shall be authorized to swear witnesses before the presentation of their testimony.

Section 8. Additional Standards for the Board of Commissioners

The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon the public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people. Government decisions and policy must be made and implemented through proper channels and processes of the governmental structure. The purpose of this section

is to establish additional guidelines for ethical standards of conduct for county commissioners. It should not be considered a substitute for the law or a county commissioner's best judgment.

County commissioners must be able to act in a manner to maintain their integrity and independence, yet must be responsible to the interests and needs of those they represent. County commissioners serve in an important advocacy capacity in meeting the needs of their citizens and should recognize the legitimacy of this role as well as the intrinsic importance of this function to the proper functioning of representative government. At the same time, county commissioners must, at times, act in an adjudicatory or administrative capacity and must, when doing so, act in a fair and impartial manner. County commissioners must know how to distinguish these roles and when each role is appropriate, and they must act accordingly. County commissioners must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each county commissioner must find within his or her own conscience the touchstone on which to determine appropriate conduct.

(a) A County Commissioner Shall Obey the Law. County commissioners shall support the Constitution of the United States, the Constitution of North Carolina and the laws enacted by the Congress of the United States and the General Assembly pursuant thereto.

(b) A County Commission Shall Uphold the Integrity and Independence of His or Her Office. County commissioners shall demonstrate the highest standards of personal integrity, truthfulness honesty and fortitude in all their public activities in order to inspire public confidence and trust in county government. County commissioners shall participate in establishing, maintaining, and enforcing, and shall themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. The provisions of this Code should be construed and applied to further these objectives.

(c) A County Commissioner Shall Avoid Impropriety and the Appearance of Impropriety in All His or Her Activities.

(i) It is essential that county government attract those citizens best qualified and willing to serve. County commissioners have legitimate interests - economic, professional and vocational - of a private nature. County commissioners shall not be denied, and shall not deny to other county commissioners or citizens, the opportunity to acquire, retain and pursue private interests, economic or otherwise, except when conflicts with their responsibility to the public cannot be avoided. County commissioners must exercise their best judgment to determine when this is the case.

(ii) County commissioners shall respect and comply with the law and shall conduct themselves at all times in a manner that promotes public confidence in the integrity of the office of county commissioner and of county government.

(iii) County commissioners shall not allow family, social, or other relationships to unduly influence their conduct or judgment and shall not lend the prestige of the office of county commissioner to advance the private interests of others; nor shall they convey or permit others to convey the impression that they are in a special position to influence them.

(d) A County Commissioner Shall Perform the Duties of the Office Diligently. County Commissioners shall, while performing the duties of the office as prescribed by law, give precedence to these duties over other activities. In the performance of these duties, the following standards shall apply:

(i) Legislative Responsibilities.

(1) County commissioners shall actively pursue policy goals they believe to be in the best interests of their constituents within the parameters of orderly decision-making, rules of the Board of County Commissioners and open government.

(2) County commissioners shall respect the legitimacy of the goals and interests of other county commissioners and shall respect the rights of others to pursue goals and policies different from their own.

(ii) Adjudicative Responsibilities.

(1) County commissioners shall be faithful to the general and local laws pertaining to the office and strive for professional competence in them. They shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) County commissioners shall demand and contribute to the maintenance of order and decorum in proceedings before the board of county commissioners.

(3) County commissioners shall be honest, patient, dignified and courteous to those with whom they deal in their official capacity, and shall require similar conduct of their staff and others subject to their direction and control.

(4) County commissioners shall accord to every person who is legally interested in a proceeding before the commission full right to be heard according to law.

(5) County commissioners shall dispose promptly of the business of the county for which they are responsible.

(iii) Administrative Responsibilities.

(1) County commissioners shall clearly distinguish legislative, adjudicatory and administrative responsibilities and shall refrain from inappropriate interference in the impartial administration of county affairs by county employees. Commissioners shall diligently discharge those administrative responsibilities that are appropriate, shall maintain professional competence in the administration of these duties and shall facilitate the diligent discharge of the administrative responsibilities of fellow commissioners and other county officials.

(2) County commissioners shall conserve the resources of the county in their charge. They shall employ county equipment, property, funds and personnel only in legally permissible pursuits and in a manner that exemplifies excellent stewardship.

(3) County commissioners shall require county employees subject to their direction and control to observe the standards of fidelity and diligence that apply to commissioners as well as those appropriate for employees.

(4) County commissioners shall take or initiate appropriate disciplinary measures against a county employee for improper conduct of which the commissioner may become aware.

(5) County commissioners shall not employ or recommend the appointment of unnecessary employees and shall exercise the power of employment only on the basis of merit, avoid favoritism and refrain from illegal discrimination and nepotism. They shall not approve compensation of employees beyond the fair value of services rendered.

(e) A County Commissioner Shall Conduct the Affairs of the Board in an Open and Public Manner. County commissioners must be aware of the letter and intent of the State's Open Meetings Law, and conduct the affairs of the Board of County Commissioners consistent with the letter and spirit of that law and consistent with the need to inspire and maintain public confidence in the integrity and fairness of county

government and the office of county commissioner. Consistent with this goal of preserving public trust, county commissioners shall be aware of the need for discretion in deliberations when the fact of discretion would pose a threat to the resources of the county, to the reputation of current or potential county employees, to orderly and responsible decision making, to the integrity of other governmental processes or to other legitimate interests of the county.

(f) A County Commissioner Shall Regulate His or Her Extra-Governmental Activities to Minimize the Risk of Conflict With His or Her Official Duties.

- (i) County commissioners shall inform themselves concerning campaign finance, conflict of interest and other appropriate state and federal laws and shall scrupulously comply with the provisions of such laws.
- (ii) County commissioners shall refrain from financial and business dealings that tend to reflect adversely on the Board or on county government or to interfere with the proper performance of official duties.
- (iii) County commissioners shall manage their personal financial interests to minimize the number of cases in which they must ask to be excused from voting on matters coming before the Board.
- (iv) Information acquired by county commissioners in their official capacity shall not be used or disclosed in financial dealings or for any other purpose not related to official duties.

(g) A County Commissioner Shall Refrain from Political Activity Inappropriate to His or Her Office.

- (i) County commissioners have a civic responsibility to support good government by every available means, to continue to inform and educate the citizenry about the affairs and processes of county government, and to make themselves available to citizens of the county so that they may ascertain and respond to the needs of the community. In doing so, county commissioners may and should join or affiliate with civic organizations whether partisan or non-partisan, may and should attend political meetings, may and should advocate and support the principles or policies of civic or political organizations consistent with the Constitution and laws of the United States and North Carolina.
- (ii) Candidates for the office of county commissioner, including incumbents:

- (1) Shall inform themselves concerning the laws of this state with regard to campaigns and relevant disclosure requirements and shall scrupulously comply with the provisions of such laws;
- (2) Shall maintain the dignity appropriate to the office, and should encourage members of their families to adhere to the same standards of political conduct that apply to commissioners;
- (3) Shall not make pledges or promises of conduct in office that they will not or cannot perform or would be illegal if it were performed;
- (4) Shall not misrepresent their identity, qualifications, present position, or other fact; and
- (5) Shall avoid pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.

Section 9. Advisory Opinions

When any County Official has a doubt as to the applicability of any provision of this policy to a particular situation involving that County Official, or as to the definition of terms used in this article, he/she may apply to the County Attorney for an advisory opinion. The County Official shall have the opportunity to present the County Official's interpretation of the facts at issue and of the applicability of provisions of this policy before such advisory opinion is made.

Upon motion properly made and seconded, adopted by the Board at its meeting on March 22, 2004.

Board and Commission Appointments

Garry E. Umstead, CMC, Clerk to the Board, distributed ballots to make appointments to the following boards and commissions:

- Durham Bicycle and Pedestrian Advisory Commission
- Durham and Wake Counties Research and Production District
- Environmental Affairs Board

RESOURCE PERSON(S): Garry E. Umstead

COUNTY MANAGER'S RECOMMENDATION: The Manager recommended that the Board of County Commissioners vote to appoint members to the above-mentioned boards/commissions.

Chairman Reckhow recognized Liz Rooks, Vice President, Planning & Development, Research Triangle Foundation of NC, to give background information about the Durham and Wake Counties Research and Production District.

Ms. Rooks presented a meticulous report, including details about each recommended appointee.

Vice-Chairman Bowser asked numerous questions regarding the service district appointments, asserting momentous concern that only two of the 13 members live in Durham County. He stressed that he would vote to appoint Durham County residents only.

Chairman Reckhow informed Ms. Rooks that the Board has not been receiving information about the committee's recommended tax rate or project lists for which the revenue would be spent. She emphasized the importance of the Commissioners being informed of the tax rate and projects.

The County Commissioners continued discussing appointments to the service district.

At Commissioner Heron's request, Ms. Rooks named various projects that had been funded through the special tax district.

Commissioner Jacobs questioned whether the vacancies on the service district are advertised.

Ms. Rooks replied that the vacancies are not advertised; the Owners and Tenants' Association at RTP submit a primary and secondary name for each position. Applications were provided at the request of Durham County staff.

Chairman Reckhow highly recommended Ms. Sally Johnson from Chapel Hill as a designee.

Vice-Chairman Bowser requested that the committee forward its meeting minutes to the Board of County Commissioners.

Chairman Reckhow asked the County Manager to attend the meetings to make certain that Durham County's interests are protected.

The following appointments were made:

Durham and Wake Counties Research and Production District (six vacant positions)

Millie Estep

Martie Gregory

Sally Johnson

Durham Bicycle and Pedestrian Advisory Commission

Diane Daniel

Environmental Affairs Board

Richard V. Crume (engineering)

William T. Harnett (air resources)

Closed Session

Commissioner Cousin moved, seconded by Commissioner Jacobs, that the Board adjourn to closed session to consider conditions of appointment of a public officer and to discuss matters relating to the relocation or expansion of industry in Durham County pursuant to G.S. § 143-318.11(a)(4) & (6).

The motion carried unanimously.

Reconvene to Open Session

Commissioner Cousin moved, seconded by Commissioner Heron, to amend the employment agreement between the County of Durham and County Manager Michael M. Ruffin as it relates to Section 4. Termination and Severance Pay.

The motion carried unanimously.

Colvard Farms Development—Permit Deadline

Vice-Chairman Bowser asked how the permit process for Colvard Farms Development Company LLC could be accelerated. Essential permits must be issued by July 1. Homes proposed in the development will be connected to the wastewater treatment plant in Chatham County. Developers of this private project need to move forward quickly. The 120 homes, ranging in price from \$1 to \$2 million, will generate huge tax revenue for Durham County, while requiring no County funding.

Chairman Reckhow stated that the Joint City-County Planning Committee discussed this issue at its March 3 meeting and has placed the item on its upcoming April 7 meeting for further discussion. The committee plans to fast track the item by severing it from the UDO and pushing it through separately.

Commissioner Heron commented that she and Chairman Reckhow visited the "state-of-the-art" treatment plant in Chatham County. She had no difficulty approving this particular project, if appropriate safeguards are established in terms of performance

bonds. Taxpayers should not be responsible for possible plant failures. She voiced opposition to opening the watershed to all development, stating, "That's why sewer lines are not placed in the watershed."

Chairman Reckhow informed the Board that she met with Neil and Jeff Hunter on Friday. Planning Director Frank Duke is processing the text amendment as fast as possible and will incorporate the agreed-upon language with respect to bonding.

Commissioner Cousin moved, seconded by Vice-Chairman Bowser, to ask the Planning Department and the Planning Commission to treat the text amendment allowing this private wastewater facility as a priority item and, specifically, that the Planning Commission move the item forward at its next meeting.

The motion carried unanimously.

County Attorney Kitchen stated that the amended ordinance must be sent to the state for approval prior to becoming effective.

Chairman Reckhow directed Attorney Kitchen to contact the state to determine if the request can be parallel tracked along with the County's processing so it can be considered simultaneously.

Adjournment

Chairman Reckhow adjourned the meeting at 10:57 p.m.

Respectfully submitted,

Vonda C. Sessoms
Deputy Clerk to the Board